IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

RSA.No. 644 of 2005()

AS.58/2002 of VI ADDL.DISTRICT COURT, ERNAKULAM
OS.660/1999 of II ADDL.SUB COURT,ERNAKULAM
.....

APPELLANT/APPELLANT/DEFENDANT:

P.M. RAPHAEL, AGED 50 YEARS,
S/O. MANUEL, PALLIPARAMBIL, ST.MARY'S BASILICA CHURCH, BROADWAY, RESIDING AT HOUSE NO.LIC NO.156 DOOR NO.36/1036, INDIRA NAGAR, NEAR JUDGES AVENUE, KALOOR, ERNAKULAM VILLAGE.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS: RESPONDENTS/ PLAINTIFFS
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1. **MARYKUTTY, AGED ABOUT 47 YEARS,**
   AGED ABOUT 52 YEARS, W/O. LATE GABRIEL BABU, MAMPOOPARAMBIL HOUSE, I.S. PRESS ROAD, ERNAKULAM, ERNAKULAM VILLAGE.

2. **ANJU, AGED ABOUT 32 YEARS,**
   D/O. LATE GABRIEL BABU, DO. DO.

3. **ABI, AGED ABOUT 30 YEARS,**
   S/O. LATE GABRIEL BABU, DO. DO.

4. **JOJO, AGED ABOUT 28 YEARS,**
   S/O. GABRIEL BABU, DO. DO.

BY ADV. SRI.T.V.ANANTHAN
SRI.C.D.JOSE

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 644 OF 2005

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DATED THIS THE 20th DAY OF JULY, 2007

JUDGMENT

Defendant in O.S.660 of 1999 on the file of Additional Sub Court, Ernakulam is the appellant. Plaintiffs are respondents. The plaint schedule property admittedly originally belonged to Anil Bhaskar as purchased from GCDA. According to respondents, from Anil Bhaskar, second respondent wife of the first respondent purchased the property and permitted appellant to occupy the building as a licensee on a monthly license fee of Rs.675/-. Contending that the license was terminated, suit was instituted seeking a decree for recovery of possession and for arrears of license fee. Appellant resisted the suit contending that respondents did not perfect their title as no registered sale deed was executed by the assignor of the respondents, Anil Bhaskar and even GCDA did not transfer title to Anil Bhaskar. It was therefore contended that respondents are not entitled to claim recovery of possession on the strength of title. It was further contended that making the appellant believe that first respondent is the absolute owner of the plaint schedule property, an oral agreement for sale was entered into

with first respondent on 22.2.1987 for sale of the plaint schedule property for a total consideration of Rs.52,000/- and towards the sale consideration advance of Rs.5000/- was paid on 22.2.1987 and subsequently on 3.6.1989, towards the balance consideration 20 sovereigns of gold were given and thereby the entire consideration was paid, but sale deed was not executed as first respondent did not get title by that time. It was admitted case that when the suit was filed, G.C.D.A had not transferred the title and only allotment was made to Anil Bhaskar which was obtained by respondents. During the pendency of the suit under Ext.A27 dated 23.6.2000, title to the plaint schedule property was transferred by GCDA directly to first respondent. Therefore first respondent is the absolute title holder of the plaint schedule property.

2. Learned Sub Judge granted a decree for recovery of possession holding that as appellant is only claiming right only under an oral agreement for sale, he is not entitled to any protection under Section 53A of the Transfer of Property Act, in the absence of a written agreement for sale and as title of first respondent was not transferred in favour of the appellant, first respondent is entitled to the decree for recovery of possession

sought for on the strength of title. But decree for arrears of license fee was not granted finding that there was monetary transaction between the parties which has not been settled. Appellant challenged the decree and judgment before District Court, Ernakulam in A.S.58 of 2002. Respondents did not challenge the decree, refusing the claim for arrears of license fee. Learned District Judge, on reappreciation of evidence, confirmed the findings of learned Sub Judge and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant and respondents were heard.

4. The title of first respondent obtained under Ext.A27 is not disputed. The only contention was that when the suit was filed respondents had no title, as the title then vested with GCDA. But appellant is also contending that he was put in possession of the property by first respondent, making him believe that he is the title holder. It is clear from the evidence that first respondent could not get the title at the time of institution of the suit, as the building was alloted to Anil Bhaskar. But under Ext.A27 title has now been transferred to first respondent. Hence on the strength of title respondents are

entitled to get a decree for recovery of possession unless appellant has a better title or he has perfected his title by adverse possession and limitation.

5. As rightly found by courts below, appellant is not entitled to the protection provided under Section 53A of the Transfer of Property Act, as even according to appellant there is no written agreement for sale. Hence appellant cannot dispute the title of respondents. As appellant is admitting the title and is only setting up an agreement for sale, he is not entitled to contend that title of respondents is barred by adverse possession and limitation. In such circumstances courts below rightly granted the decree for recovery of possession, though decree for realisation of arrears of license fee was not granted, which portion of the decree has already become final. In such circumstances I find no substantial question of law involved in the appeal and it is only to be dismissed.

6. Learned counsel appearing for appellant then submitted that appellant may be granted reaasonable time to vacate the building. It was submitted that the execution petition is posted for **21.7.2007.** If the appellant files an affidavit before the executing court within **five days** from today, undertaking to

surrender the plaint schedule property unconditionally on the expiry of three months from today, executing court shall postpone the delivery for **three months** from today.

Appeal is dismissed, with the above observation.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-